(C.F 135) (3) (1)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

Second Appeal No. 21 Of 2005.

APPELLANT :- Bansi Lal,son of Bodhiram Kenwat, aged about 52 years, Occupation agriculturist,
PLAINTIFF resident of Village Hardi, Tahsil Baloda Bazar, District Raipur (Chhattisgarh), Present resident of Village Mekri, Tah. Pamgarh, District Janjgir-Champa(C.G.)

R.R. No. 8/105 Presented by Sri H. Bajpai dated 10.1.05

V E R S U S

RESPONDENT :- 1. Balodhiya, son of Badku, aged 39 years Caste Kenwat, Occupation agriculturist,
DEFENDENTS 2. Ramkishun alias Muni Baba, son of Jaharu Marar, aged about 51 years,
Both resident of Village Hardi, Tahsil Balodabazar, District Raipur (C.G.),
3. Tijmati alias Tij Bai, daughter of Dhansingh Kenwat, aged 67 years, resident of Village Chatipali, P.O. and P.S. Kasdol, Tahsil Kasdol, District Raipur (Chhattisgarh),
4. State of Chhattisgarh, Through Collector Raipur, District Raipur (Chhattisgarh),

Copy 10.1.05 C.G. Bilaspur

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

(Claim in appeal valued at Rs. 1250 and c.f paid at Rs. 135 only)

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(22)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Second Appeal No.21 of 2005

Appellant/
Plaintiff :- Bansi Lal

Vs

Respondents/
Defendants :- Balodhiya and others

Appellant by Shri H.B.Agrawal, Sr.Advocate.

JUDGEMENT
(Delivered on 16 /03/2005)

Heard on admission.

The appellant has preferred this appeal as he is aggrieved by the judgment and decree dated 11.10.2004 passed by the first Addl. District Judge, Balouda Bazar in Civil Appeal No. 21-A/2004 arising out of the judgment and decree dated 22.04.2004 in Civil Suit No. 26-A/2001 passed by Civil Judge, Class-II, Balouda Bazar and both the Courts below have dismissed the suit of the plaintiff for perpetual injunction and consequently possession over the suit house. (Parties hereinafter shall be referred to as per their description in the trial court).

The case of the plaintiff before the trial Court was that the suit house is the ancestral property, which is situated in the Abadi land of village Hardi. At present the plaintiff has left the village Hardi and is residing at village Mekri, Tehsil-Pamgarh and taking advantage of his absence, the respondents have encroached over the suit house by breaking open the lock. The plaintiff served a legal notice dated 10.12.1996 to the defendants to vacate the suit house and therefore the suit has been filed.

In their reply, defendants No. 1 to 3 has submitted that there is no property of the plaintiff situated in the village Hardi and the suit property was the ancestral property of defendant No.3 and the same was sold by him to defendant No.2 on

17.01.1989 and the house was purchased by defendant No.1 from defendant No.3 on 21.08.1995 and they are in possession since then. The house in question was constructed by the father of the defendant No.1 and after the death of his father, he is in possession and the plaintiff has no right, title or possession over the property and they are not encroachers.

The trial Court dismissed the suit of the plaintiff on the ground that on the admission of the plaintiff that the defendants are in possession of the suit property, the plaintiff has failed to prove that the property in question was encroached by breaking open the lock as the plaintiff has not filed any document to establish that he is the owner of the suit property or he was in possession of the suit property prior to 1996 and only on the basis of the pleadings and oral evidence, it can not be said that the plaintiff was in possession before 1996. The fact that no report was lodged by the plaintiff when the defendants encroached upon his house by breaking open the lock, has been cited as a reason for not believing the contention of the plaintiff and accordingly, the trial Court recorded a finding that the plaintiff has failed to prove that he is the owner and possessor of the suit property and accordingly, it has been further held that he is not entitled for perpetual injunction as prayed.

In the first appeal, the plaintiff filed an application under Order 41 Rule 27 of the C.P.C. for permission to file gift deed and voter list. However, the application was rejected by the first Appellate Court on the ground that explanation for filing the same belatedly is not proper and it is not even supported by an affidavit and further that in the gift deed, the description of property is not mentioned and it is also not mentioned as to which place the property is situated. Therefore, on the above grounds, application preferred under Order 41 Rule 27 of the C.P.C. was rejected.

Learned first Appellate Court on the basis of the appreciation of the oral and documentary evidence available on record has arrived to the conclusion that the plaintiff has failed to prove his ownership and possession over the suit property and as such he is not entitled for a decree of possession or perpetual injunction and accordingly, the suit was dismissed confirming the judgement and decree passed by the trial Court .

In this appeal, learned counsel for the appellant/plaintiff has also filed an application under Order 41 Rue 27 of the C.P.C. and as prayed for permission to file the documents being the voter list of Gram Panchayat of Village Hardi for the year 1983 in which the name of plaintiff Bansi lal appears at Sl.No.96 and another document being Khasra Panchshala for the year 2003-04 and 2004-05 pertaining to some Abadi land.

However, learned counsel for the appellant/plaintiff is not able to show as to how these documents are relevant for adjudication of the second appeal. Learned counsel assailed the finding of both the Courts below and proposed some substantial question of law as enumerated in para A to E in page No. 3.

I have heard learned counsel for the appellant/plaintiff, gone through the impugned judgment and perused the material available on record.

In the above circumstances, the application preferred under Order 41 Rule 27 of C.P.C. is liable to be dismissed because counsel for the appellant/plaintiff is not able to show as to how these documents are relevant for deciding the appeal. Accordingly, the above application is set aside. ~~and the~~

Considering the facts and circumstances, I am of the opinion that the judgement and decree passed by both the Courts below is based on evidence and material available on record and there is a concurrent finding of fact that the appellant has failed to prove his ownership or possession over the suit property prior to year 1996 and further I do not find any substantial question of law involved in this appeal for its adjudication. Accordingly, the appeal deserves to be dismissed and it is dismissed.

Sd/-
Dhirendra Mishra
Judge

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